question refers, this revolution in his employment

-as prosperous and as well conducted a business

as a Jerseyman ever carried on in his life-com-

pletely destroyed, an I hoself entering upon the

Patents.) So much for the general doctrine for which we contend, and every one of the plaintiff's erres, and other cases printed upon the same brief, are all answered, if your Honors please, by a little attention to the period in the case to which they rier. Chrono'ogy, they say, is everything in testing the disposal of such cases. Well, it this may be accepted as a quite undoubted settlement of Changery designs, is not it undoubted settlement of is not it almost conclusive of Chancely decisions, is not it aimost conclusive of the case at har! When your Honors consider for the case at har! shout a couple of centuries, carried back of the English Chancery cases, and for sixty years of re-English Chancery cases, and for sixty years of re-ports may be carried back in this country, consid-ering how important a part of the Judiciary it is, and how indepensable it was to settle definitely and easily its rules and conditions of transcendent action in this behalf, I do submit if, to this day, no disdication can be worded. adjudication can be produced against us, it must be deemed almost concl. sive by everybody that it has no root in the system of Chancery jurispru-Sence. In the next place, every text writer, if we a trend to the period in which he is treating any motion for injunction, concurs in the doctrine exactly as we have enunciated it. Curtis, 336, who I have just had the honor to read, concurs. Hein-marche, also an admirable writer, at the pages set barche, also an admirable which at the perfect of the forth in the brief, in terms confirms me; so does Daniel, on high authority; so does Drury, en in junctions and patents. May it please the Court, it is this consideration that gives me a degree of pleasure, inasmuch as it enables me, in the pleasure, maximuch as it changes life, in the first place, perhaps to intimate an answer, good or bad, to the particular case to which your Honor called my attention—that is, the case of the Wheeling Bridge; and, in the next place, this rule is fairly and necessarily deducible from the origin and nature of Chancery jurisdiction over the subject matter of patents. In this jurisdiction, Chancery is not dealing with equitable rights, but with legal rights. The rights of both parties are wholly at and the right of a patentee is a right upon deed, and is a strictly legal right, or it is nothing but a privilege. The right of a citizen to inbor at a useful trade in his calling is a right at law, jure natural, but guarded by the social law. It is, then, deduction from the nature and constitution of Chancery, in any jurisdiction which it has over such rights as these; in all its jurisdiction it folsuch rights as there; in all its presidence it fol-lows the law; and slith eigh I do not mean to read from authorities to much extent, I think it proper to read the Court one passage, insumed as cer-tain important consequences flow from it, from an authority named in the brief, (Hemmarche, 187 and 306, sec. 3,) which sets forth that the privilege

conferred by a patent is a legal right, and is only
to be tried by the common law of the realm.

Mr. Webster—Will you read the passage? It is not contained in the statute of monopolies.

Mr. Choate—I understand the criticism, Mr. Choate—I understand the criticism, Mr. Webster, you would put upon it, and I will take up that point directly. Before I turn to the Statues at Large, let me fortify the just observation of Mr. Hemmarche by Mr. Thompson, an American, but a ceaser and more venerable name—a treat hance in a little folder of the large. great lawyer, in all the fields of the law, a great petent hawyer and Chancellor precamently, 1st Pane, 446, Sullivan and Reducid.) He then procerds to one very important consideration longer now novel, and that is, that our own is laten makes no distinction in their behalf; and let me add, that that learned Judge is speaking to an application in an earlier and easier stage of a mo-tion for injunction. Now I will turn your attenquestion has arisen upon the accuracof the citation, for one moment only, to Book Third, page 91, of Scattles at Large. The first s a section declaring all monopones to be void. The fifth section speaks, nevertheless, of the rights of patents. Then I argue that the secondition means to say that the common law of the realm shall declare, in any given and controverted case, whether is a patent for novelty or a monopoly abolished by the first section of the act, for the language is substantially this. My construction is this: The first section abolishes mercipolies: the fifth section declares that a patent for a new invention is a legal right; and that leaver it a su ject of great debate whether the grant of a patent is valid, or whether the second section erects a judicature by which the Commons of Eugland will that that question shall be determined. However this may be, equity follows the law. Now, what is the meaning of the max m, that equity follows the law? In this case, I apprehead, it means that it shall refer to the commen law of the realm to determine it is its own tribunals the existence of the light right, and, that dene, then, by it own peculiar and characteristic powers, Chancery lends its aid to protect the aleged right, until it can be determine is a right or not, to protect is after it has been as-certained to be a right-protection, not ascertainment protection, and not a mere enterprise to re-solve a riddle of right, ea murin cancelarit. I subnot to thes Bench that these limits and marks are the demarcation between those two great auxiliary institutions, clearly and admirably eccording to all our ideas of right and justice. What could we desire better, if we were desumn of another Utopa? What better institution could we desire for the determination of right-a right depending upon the credibinty of that man, or on the memory or source of tucy of the-a right depending upon the judgment of experts, or on the interpretation of grantswhat so appropriate as a jury of twelve When the case has passed from the nist what so admirable and so perfect as the transcen dent power of chancery, which secures the right forever to him to whom the law has aire dy ascer-taned it to belong? Finally, the language in every case in the law is a concurrent demonstration and illustration of this very doctrine. Every adjudged case, and the learning of one of my associates has enabled me to place chronologically upon the brief before your Honors a series of judgments for one hundred years, beginning in 1766, and coming down to 1849—every acquired case from the beginning announces this very doctrine of adjudication. In 're is the case of Hardwicke. There is the greate. case, because living at a later period, of the Lord Chancellor Livingston, in the 3d of Merrivale. There is Cottingbam, whose learned decisions on the English Bench have sufficed for all later cases. Honors, that the general rule is placed beyond a particle of controversy, and it will not be in this Court that that general rule will be brought into question. I should leave this doctrine very in-complete, if I did not remind your Honors of one exemplification and application of it, apparently newer, but yet perfectly certain, and that is, if it turns out that the plaintin asks for no injunction till the final trial, it, at the trial it appears to the Court that he has been guilty, in their judgment, of laches in not claiming it in his bill, before the fina hearing of the bill, will not be retained to allow him an opportunity then to go back to law, but will be dismissed as a matter of course; and that has been settled, if your Honors please, by an adjudention in the 1st of Benon, upon the brief, (Sportiswood & Bacon,) and brought from him by a peal to Lord Chancellor Cottingham, who deliberately confirmed that prac-As I shab not return to that topic, may l not, before I dismiss the subject, ask your honors if that case is not this case. Sir, to this day, we never had any notice that the plaintiff moved an in junction on the general ground that he was en-titled to it, on this bill. At the discussions of last November or October, notice was indeed given for the first time that an injection would be moved for on the special form of the bill, I mean to say it was a bill for a specific performance; but it was

not until our friend began his opening argument that the plaintiff moved for an injection on the general rule of the right of a party on the general form of this bid; and your honors will consider whether or not, under the creum-tances of the case, mass not, as

ease, meanach as he might have done it on the comin, in of the bill, or on the filing of our answer

and you will entertain, and you will consider whether there was anything wanting to our exertions to bring on the cause, whether or not. May it please your Hosors, I tear I am attempts

ing something too much upon the general rule; but I must ask, is this case within it! It is said

that it is not, for some one, two, or three reasons. Perhaps I imperfectly accompanied them in the argument of the learned counsel. May I, before I enter upon it, offer one word of authority!—(Curtis, 359) It is said, then, in the first place, that this is not within the ordinary rule, because it is said that it is not a bill for an infringement of

the patent, for a perpetual injunction, for an or-dinary form, but is really and merely a bill for the

specific performance of a cov nant or covenants.

It is suggested, secondly, but not pressed by my discreet and technical brother, that there are

trusted with Mr. Day; and thirdly, it is said, and this is a matter which I have committed to the

learning of my friend and associate, that there is no question involved in these volumes fit or proper for the examination of a jury under the direction

of the Court. These are the three general

Now, in the first place, it is enggested that it is a

is extracted from the general rule.

grounds on which I understand they claim this case is extracted from the general

some reasons why a Jers y jury should not be

bill for the specific performance of a settlement, which est lement estops the defendant from denying the validity of the patent. It is not really a bill for the specific performance of one or the other of the contracts. To this I answer, may it other of the contracts. To this fankwer, may to please your Honors, if it is established in point of fact, this is a perfect answer to the general rule, and that if this be taken as a bill for the specific performance, and if the covenants do on ground of fact estop us, and are to be enforced, there is an end of the matter. Is it then to be taken to be a bill for the specific performance of the contracts, but not a bill for infringement? Can an injunc-tion upon infringement be moved for in the ordin-ary form? And, as such a bill, can it stand for a ary form? And, as such a bill, can it stand for a moment upon the undisputed fasts now before this Court? Now, I am disposed to admit that, although perhaps it is not drawn in the most art stic manner, and from some policy on the part of the pleader, yet we do suppose, and we always have suppose, that it was to be pressed simply as the succión performance of a consequence. as the specific performance of a covenant, and assure your Honors, upon my personal veracity and character we came to this trial to-day—we came to this trial on the opening of the Court, and we have made every particle of our preparation, from last October, upon the supposition that were to deal with nothing under neaven but a bill for a specific performance of a contract, to which bill we were happy, here and everywhere, where the facts were at hand, to hold ourselves the facts were at hand, to hold ourselves to snswer. Your Honors may be aware that Mr. Day, under the advice of his counsel, or the greater number of them, has actually neg-lected to come here attended with evidence to prove his ability to say, "I also am an inven-tor," and to prove the long series of his young attempts to significant himself in the line of dis-covery in the calling he had chosen. It is under that advice, founded upon what we have always understood to be the prayer of the bill, that understood to be the prayer of the bill, that he comes here to-day unprepared to meet the case which a portion of my learned brothers' ar-gument presents for us to meet. We thought it a bill for a specific performance, and we so heard a foll for a special performance, and I refer for con-firmation on this point to the distinct subject of this power and that our admirable brother Cur-tis, now a Justice on the bench with your Honor, made an application to the Court to be heard upon that bil upon the ground that it would give the Court no trouble to investigate the facts, but that it presented matters of estoppel on which the controversy would be sure to terminate, and which would save them and us any further liti-geton in a court of law. Well, we have always so understood it, and if it turns out that we have nesunderstood it, then we are in danger of being negoticerstood it. then we are in canger or seng facally supprised. I co not say that this is an a distinctly drawn bill for a specific performance. I know the learning of the man who did it would enable him to draw a better bill for a specific performance! It seems to be a bill binding the de-It states a settlement of a controversy between parties, by covenants, but it does not prove them.
I the Court will turn to the fifth page of the defendant's record, containing their answer, your honors will find that it sets out, in detail, the fact of the settlement then and there entered into and a great variety of covenants; that he process ised to stamp the shirred goods of his manufactor ture; that he promised not to munufacture out-side of the license which he took, to pay a tarif, and to keep an account upon the amount manufactured. It states the settlement, and it states the covenants, and therefore, as I understood from that part of this form, it is a bill for a specific performance. So it may be taken, may it please your Honors; but, then, a specific per-formance of what! I have the honor respectfully to submit, in the first place, that it cans maintained for an instant, as such a bill; and, in the next place, that it presents no matter, accord ing to the rules of Chancery pleading, to the notice of this Court, under which the defendant is to be estopped, under any construction of the bill, from the right of hitgating this cause in any court. is a bill for the specific performance of what!
Why, simply for the specific performance of a singie one of all the covenants contained on Day's side of the settlement. It prays on account not of what Day has done under his license—not that he coes not pay the tariff, it complains of his not that he does not keep an account under his herese—not that he does not stamp his goods according to the license—but it specially and ex-pressly excepts from the prayer of the bill, and the pressly excepts from the prayer of the foll, and the complaint of the party, everything in the world but what he has done outside his heense; and there-fore I repeat that it is, beyond any controversy whatever, then, as a bill for the specific performance of the covenant contained on page detendant's record, and of no hing else in the world. Now, then, turning back from that coverant to page 7 of the plaintiff's bill, your Honor will fine that they ask that the defendant may render his account of the articles made, &c.; except cense-that is to say, here is a settlement with a half dozen coven mis by Day; one that he will keep account books; another, that he would do stand his goods with Goodyear's name, &c., &c. And, then, they sue him not for anything about the tar fi-not for fading to stamp the goods-not for keeping no account books—they ask him not for an account of anything he does under the license, and I speak advisedly; but they desert all that and go straight and square to an inquiry into at account of what he does outside the license, proceeding manifestly and fully upon the cover and there we are. May it please your Honors if this is now to be turned into and treated as a bill for specific performance, is there any longer any fixity of meaning to language?—
Here we are upon a bill for the specific performance of that one angle covenant. Now, I ask your Henors dit can be pretended for an instant, upon the facts, that a bill for a specific performance like that, can be maintained on the evidence before this Ceurs. Resorting, then, to the terms of the coverant on which they proceed to try this case, the Court will discern that it is a covenant while Goodyear protects Day in the exclusive right to menulacture and vend shirred goods, ast to man-bracture anything but shirred goods except what he is heresed by Goodyear to do. It covenants that while Goodyear protects him in the exclusive right to manufacture shured goods, he will not manufacture any other articles than he is itcensed by Goodyear to do; and now the question is, whether upon that covenant the plaintiff can maintain his claim. I need not say it is incumbent on the plaintiff to show that he has so protected Day exactly and substantially. While he protects Day, Day shall not co anything he is not licensed to do. They complain that he has done something that he are not beensed to do. Of course, then, it is incumbent in them to aver and prove that he has, during some period while Day has invaded his the manufacture and seiling of shirred goods. Now does the ponintiff in his bul aver any such thing as that? Not a word of it. Of course, he cannot of-fer any proof that he has done it; for he cannot offer proof of anything he has not averred. On the contrary, the defencant denies it expinitly; while the plantiff meets the denial without a marmar and without a proof. "I sue von," says he, "on covenant by which you agreed to manufacture nothing but shirred goods, it I would protect you in the manufacture by all my power. But I forget to aver, and I totally but to prove that I have this protected you. I charge you sich manufacturing out of your license, and I totally fail to protect you." Let us look at the evidence of the facts a little, concerning a bill for the specific performance of such a contract as this.-In the loss place, then, it is conclusively estab-listed, that the plaintiff did not protect the defendant in his branch of the manufacture. There is an end of the plaintiff's bih. I am trying my client to some extent as well as his case. And when I regard the sourt in which this bul was drawn, and the general courtesy of manner in which my learn ed opponent opened upon my client, I shall not, unless I am a monshed by your Honors, deprive Mr. Day of the privilege of exposing to the beach the equities of this case, and all the facts upon which trey are based. They sue him because he han he would not manufacture out of h They do not aver that they protected him; they do not prove it. In the first place it is conclusive ly established by verdet and judgment, that down to the first of January, 1849, two years and three or four months, Goodyear had not afforded one moment of the protection contemplated by the covenant for which we paid him \$5,000 and for which alone we bound ourselves not to transgress the limit of the license; not a particle of protec-tion for two years and four months. Your Honor is too familiar with this point to be referred even to the record. The issue upon the seventh plea was directly upon the allegation that he had not protected him, and the jury found, of course, that om 1846 to the institution of the suit, which was e first of January, 1849, that he had not protected him. That wo ild seem to be an end. The

time has been, " when the brains were out the man would die, and there an end." But let us trace

pelled him to withdraw himself to another branch of the same business. We equally find, coincident exactly with the period of time to which the this point a little further. What should the plaintiff allege in such a posture of facts as that? Should be not at least aver that down to the first of January, 1849, he had not afforded the stipulated protection, but that after that time he woke up suddenly to some sense of his duty to protect
—and should he not try to prove it? Has he made an averment of any such protection? tainly not. Then we cannot off a particle of proof, if he had a volume of it. The answer denies this protection, and the presumption of evidence, I take it, may it please your Honors, is, that a state of things that has lasted for two years end a half, continues till the contrary is shown .-That yerd ct, therefore, remains unen by any particle of evidence. This Court has before it competent and sufficient eviden e that, down to a particle of protection for which we stipulated, before the 1st January, or after the 1st of January. But it does not rest there, if your Honors please, for in the next place, does not that verdet go a good deal deeper than this? The Court avers that the verdict on the seventh issue finds, not merely that Goodyear did not protect, but connived at the intringements of other persons with Mr. Day's business. If the Court will allow me to turn to the 74th page of the Record, and to call their attention to the seventh plea, they will find it con-cludes, that an issue is taken upon it, and then the defendant says, "protect this defendant," &c. And on that issue the jury affirm the truth of the plea. If, then, it be successfully estab-lished, not merely that Mr. Doodyear has not pro-tected the defendant in this case, but connived at the con mission of infringements as med and pointed at Mr. Day, then I have to ask the Court whe ther the third covenant contained in Goodyear's original settlement with Mr. Day, has or has not been broken on his part. If it has been it goes a great deal deeper than a mere discharge from a covenant to protect, for it discharges every one of the covenants in the settlement from beginning to end. The language of that covenant is this—that "said Goodyear will not hereafter grant any right license, or agree-ment." &c. Now, if the jury have affin d that be old comive at the manufacture of these goods by other persons, in violation of his dute to pro-tect, it is for your Honors to say of this agreement, in this third covenant, that he shall by no agreement, assuming the manly form of a direct nent on the one hand, or sneaking under the de-nomination of covenants on the other, that he will by no means aid or abet, or as far as in him lies, permit anybody to interfere with Mr. Day in the exclusive monopoly of the article which it was the object of one party to sell, and the other party to buy. I submit, without going a step further, on the mere verdict of the jury, tout it is for your Honors to say whether that can not be the er the case. I do not kno v that it may not be said that action may have been taken on demurrer. I will deal frankly with the Court. I will not say but that I have to show whether or not the plea is double, and issue is taken on the whole, which makes a double averment, and whether there is an estoppel on both averments. However that may be, we go, on the evidence, a goad way be-yond this. I suderstand the argument of the earned counsel to be, that though Goodyear may not have afforded protection to Day, down to the 1-t of January, 1849, that still, if he has afforded him protection's nee that time, Dav's cov nant is Honors please, whether or not, in point of fact, Mr. Goodycar has afforded the least porection to Mr. Day; but I am now about to submit this proposition—and only submit it—and even it to the acgment of the Chancellor; if it is to be taken, it must be, to the conclusive establish in that for two years and some months, the plantiff did not protect Mr. Day at all; and if it be further true, that thereupon Mr. Dav, deprive tof the protection for which he bargamed, was driven from the business in which he had stipulated to be protected, and forced to enter into another branch of the manufacture, I have to submit that it is not a reasonable construction, that after all that, Mr. Goodycar may wake up and demonstrate an offer of protection, beginning two years after the coven onts ad been made, and then insist on d aving Mr. Day back again, after he had invested nimself in an other, into the business in which he agreed to protect him, but in which he did not protect him from which his want of protection compelled Mr Day to make his escape. Is it not an inevitable in terpretation that Goodyear, within some reasonahis meaning of that word protection, is to protect his. Day from the first, is to begin the protection, and is to continue it constantly, effectually and zealcurly; and unless that is done, Day is not bound at all? And therefore I say, if your Honors find that Goodyear has neglected? find that Goodyear has neglected to alloo d protec-tion for two years and a hall, and that the conse-quence was that Mr. Day was driven from the busine-s and obliged to enter into another, it is for your lionors to say, whether it is not a in instrous ter that, Mr. Goodyear may set about tendering that which he has foled to extend to him till that covenant has been stone dead for two years and a half, until he shall have been driven from doing business under it. I submit that the construction is too unreasonable to be contended for a single moment, and, therefore, the Court will call on the only to show, that in consequence of this interrup-tion of his business established as it is too by the verdict of the Jury, in point of evidence, Mr. Day was encountered by a competition fostered into life by that wunt of protection, which comallowed, and protected, to do, and forced but into another; the clore, I say, that the effect of it into another; the core, I say, that the easer on its, after the interruption of two years and a quarter, wholly to discharge Mr. Day from this contract. The language is, that while Day is protected be shall co nothing slee but this—the tis, while he is continually protected by a protection beginning at the first, or within a reasonable time after making the agreement; a protection steadily, forced by a protection of the pr effectually and continually enforced—not a pro-tection withneld till he is driven from th market, and compelled, the best way he can to find another; and then, fitfully, capriciously and intermutingly resumed; and thus drive him backward and forward, this year in one thing, and next year in another thing, at the sole will and pleasure of Goodyear himself. Now, I think that this construction is sided, not to say con-clusively forced upon us, by a settled doctrine relating to matters of specific performance—for example, it is a familiar doctrine, that if there is any unf irness, or neglect, or laches on the part of pleint off, he shall not have the extraordinary aid of a Court of Chancery to compel the performance of his own side of a covenant. Andagain, if there has been a change of circumstances arising from the conduct of the plaintiff him elf, trere has been a great change in the circum-tauces of the parties, after the contract was originally made, and before the time when he applied to a Court of Crancery to compel its perfor nance, he must sub mit his case to an act on at law to recover damages. I take it, therefore, for gran ed, is the fact turns out to be established, and I am now about to see whether or not it is established by the evidence of this want of protection, Mr. Day, who, at the time the settlement was made, was doing a prosperous business, in which he sought to be pro-tected and secured by the contract itself, was, within the time to which the verdict in this case extends the want of protection, that is to say, be too the first of January, 1849, completely driver from that employment, and compelled to absorbed it as if he had been hunted from the State of his adoption, and compelled to adopt another, for the hist time in his life. If we snow you upon the evidence in the record, that such was the fact, I ound hardly it ink the learned counsel would con tend that that covenant could again be revived into We place trat matter, it your Honors please leyond a particle of controversy, by the evidence we introduce. In the first place the verdict establishes it. I have heretolore called your attention to the seventh plea, but that upon the second plea is an issue on the question whether or not so rainous a competition superveied, that the profits and business of Mr. Day were naterially impaired; and the jory found what we have here averied to be true, and the law here jury excluded the fact that Goodyear gave him he contact that Goodyear gave him no menner of protection for two years a quarter; and the very same jury, on another tral, established that probable, natural, and material fact, that, for the *ant of that very protection, the profits of his busines had been naturalty im-pance, but they could not find from the form of the contract that he was obliged to abundon that the contract that he was obliged to shindon that en ployment and enter another; and I a n now about to add to the proof of the verdict, the evidence upon this point, by a very brief allusion to it. We shall show you this, by the testimony of thirteen witnesses, though I am not about to read even their names—I will state the result. We proved by this body of evidence, uncontradicted by one scrap of proof in the whole case, that this failure to protect Day, shown by the jury to last till the let of January, 1849, had the effect of festering a ruinous competition, which compelled him

tering a ruinous competition, which compelled him to abancon the business of making and vending of

this form of shirred or corrugated goods, and com-

introductory stages of a new business. thereto by the direct consequence of Goodyear's act. Now, the general re-uit of their testimony That at the time those covenants were entered into, Mr. Day was engaged in the manufacture of that form of shirted or corrugated goods, which we call suspenders; that his suspenders were the best in the market; that he knew how to do it well, and was doing it well; that it was a prosperous and profitable business, and this covenant was made to continue bim, with the same success and prosperity, in that employment; that after the beginning of 1847, immediately after, as we find by the verdict, a competition spring up, by which large quantities of the same descripon of goods, but wholly inferior in quality, we brought in rumous competition into the market; that his business immediately began to decline, the competition continued to increase, and that down to about the time when the Court gave that verdict, this want of protection was contin that at the commencement of that suit by Goodyear on his covenant, the original business was lestroyed, and a new one was beginning to grow. Now, sir, there are thirteen witnesses upon your Honor's brief, whose title to credence is and isputed -they are found upon pages 18 and 19 of the brief we have placed in your hands. Now, then, inde-pendent of any direct consistance of Go dyear, dependent of any evidence to show whether or protected Day after the verdict, waich has been the ground they have been arguing: we aver a failure to establish such a protection, (and prove it by the verdict) for such a length of time, and the consequences of it are such, that it be-comes inequitable that that covenant should be revived against him by any worthless offer of pro-tection by Goodyear. Even, therefore, if this bill alleged, and if the case showed, protection, after it was too late, this Court, I apprehend, will not allow this covenant so to run back, and operate so fitfully, and by intermittence, and so to step when Goodyear chooses, withholding protection to Day, till Day is pershing, and when he is pretry nearly ready to die, potting his finger upon his pulse, and letting in a little air and a little light, in the form of protection and then call on him once more for his covenant. I submit that he cannot thus play upon Day as upon a pipe. I'ms would be something worse than the celebrated letter of Dr. Johnson. It would be the patron of the drowning man who withholes assistance, and does not en unber hon with aid while he is drowning, but who waits til he is drowned, and bestows t upon him at the Coroner's inquest. Such protection is not stipu-lated. I am still dealing, may it please your Honors, with the proposition on the other side, that although there was a failure to project, for two years and a quarter, still if they could have proved that after the expiration of that time, the protection so long forgotten was continued, then this covenant would come again to bie, and I have submetted that it is a wholly unreasonable enterpre-tation of the coverant; for, so long a neglect of protection has changed the position of Mr and deprived him of what protection was to give and deprived him of what protection was to give, and had driven him for a substitute som-where else. But I have not quite done with this part of the case. If I mi-take not, there is a view in which this pretended protection may be placed before the Court; or rather the protection of the real pl-intiffs whom I am pretty soon to develop, will appear to your fluores in a hold and striking enormity and deformity of injustice. enormity and deformity of injustice. Now, in deermining whether the failure to protect for such s leigth of time, and after these consequences have followed, should, or should not, preclude Geodveer from afterward setting up a late and inadequate protection, as a reason for reviving the coverant, whose animation he had temporally destroved, I ask your Honors to take notice of one circumstance of great importance in the proof, and that is, if the Court please, that the very comp-titors, who thus take advantage of Goodyear's want of protection, to fill the markets as the licenses of Goodyear, holding outstanding licenses at the time when he made his covenant, and whose licenses he agreed to get up; that after it was arranged that they would surrender the licenses outstandarg, and stop work ng by the first of January, every man of them, in direct and gross hand on the every man of them, in direct and gross hand on the covenant with Goodyear, and, through Goodyear, with Day, set to work to manufacture the raw material or the fabric for suspenders. During the two or three months which were left for them to work in, though the day time, in which they might still work, was sufficient to use up their two material they proceeded at once for them. 'naw material, they proceeded at once to change their entire course of labor, to manufacture in unnound quantities, by extraordinary means, by doubling the number of their hands, by devoting the bours usually allotted to rest, by turning day into night, that they might turn night int. Day, doubling the quantity of their performance, so that, in point of fact, up to the first of June, 1847, they had succeeded in accumulating upon their hands by the labors of three month rish for manufacturing than they had accumulated in two or three years before-the grossest and the lowest fraud upon the contract they had just made with Goodyear, for the benefit of Day, that it ever fell to my lot to expose. And yet these very men are the men for whose benefit this bill in Chancery is prosecuted to-day, and these very men, in this way operating in Irond of their own contracts, turn toodyear's want of protection into a ruinous competition upon Day. These are the very men who come here and say that hi covenant presents him from doing another business, after they had driven him from that in which he was to have been protected. The coverants were, that while he is protected in making suspenders, he will do nothing else, and these men, it hand of their own agreements, drove him from that business, and then say he is still bound to do nothing else. If there was ever an estoppel granted on such a demand, this, I should think, must be its lowest degree. Another proposition is, that after these licensees agreed to surrender their licenses, in the fall of 1846, and to do no more work after the first of January, 1847, they proceeded to enict a gross final up in their surrement, because they proceeded to desert proceeded to enset a gross hand up is their agreement, because they proceeded to desert their original course of doing their business, by force of which they crowded more work and more results into those three months than they had done for two years before. I propose in the next place to show, by reading a gocument or two, the meaning of which cannot be mistaken, that these men are our antagonists this cay in this Court; and it is on behalf of these men -on whom one of your Honors had occasion to make some observations-it is on their behalf, that it is alleged that Mr. Day's covenant, the fruits and benefit of which they have deprived him of, is still binding on him. These three men, or three concerns—the Newark Company, the Onderdonk Con pany, and somebody else—three persons who have hoped to find layor in this Court, perhaps generally, personally respectable, beyond all doubt pract c d the grossest and shallowest fraud upon a plant and clear agreement that was ever estab-ished in a Court of Justice, and it is to that very traud, and the results and consequences of it, that Mr. Day's position, from that time, is to be as cobed. In the first place, I submit that the ver-dict on the second issue finds this matter of fact; and in the next place, the evidence shows it. Take Fore & Co., formstance. We have made reference to a witness by the name of Rigoy, in the 4th volume of Defendent's Evidence, page 259, which you Horors will find puts it at rest for Ford & Co What says that witness? He says he was with that Company from Aug., 1845, to March, 1847. He proves that he heard of the agreement that along in the fail of that year they would terminate their labors; that about the time when he first neard of that agreement, there was a great and sudden increase of their force, a great increase in the hours of their labor, a great increase in the quantity of the sharred or corrugated goods got ready to be made into suspenders; that orders all at once came out to go to work with all their forces, because they must get done manufacturing by such a time; that they said they had got leave to shir what sock they had on hand, and that was true, within certain himits; but on that permission they pro erded to buy in large quantities of new stock, and before the beginning of the year, twenty-fire or thurty to our and yards of new and raw material were finished by them; that they began to work extra all at once; always till midnight, offen all hight. Christmasreturned, and the daylighe dawn of the new year fell on their unbaptized labors. On the testimony of this witness, they were worked secretly, and the machinery was in constant toil. That is the testimony of Rigby concerning the performances of Ford & Co., and it is supported by other witness. by other witnesses. I class the evidence so as to include the witnesses who speak of the operations of the Newark Company. We called seven witnesses also—referred to, by name and page upon the book of control of the book of records-five of whom were in the campley ment of this very company during the years of 1840 and 1847, who know and swear to their secret as well

es their more open operations; one of the seven witnesses, though not in their employ, buying of them from time to time, and knowing exactly the goods they made; and other of them occasionally tiling them the raw material. The result is, that car bone of all these witnesses knew of these trans-actions, unpleasant to everybody and creditable to These witnesses prove that these persons entered into an agreement to surrender entered into an agreement to surrenser their in-censes and labors on the 31st of December, 1846. Good-naturedly, but perhaps, improdently, Mr. Day was willing that they should work up the stock they had then on hand, that they should work it up, as they had been accustomed to do their work, so that the manufacture of suspenders might go on part passu with the manferture of the fabrics, expecting to find, not that they should emarge their operations, after working up their raw material and saving it from waste, but that he should in good tasta, had himself on the 1st of January, 1847 entering, unincumbered unembar January, 18-4 entering, rassed, and unimpeded, upon a business field which he had paid valuable consideration for over and again. They made that agreement with him or they made it with Goodyear for him, and the instant they had done it, they proceeded, as I have stated, to change the whole course of their em-ployment, to double the force of their hauds, to ofract their day's labors through the whole of the night, to adolargely to their stock of raw materral, so that on the 1st of January, instead of their suspenders being even with their stock, and a portion of it sold out, they had an accumulation of meterials on hand, from which surpenders were made and sold for ten months afterward. Indeed, they had an accumulation of materials, by which us are of tem bragged to the witness, they could supply every man and boy in the United States pair of suspenders It would be only to declaim to press the attention of the Court further to so obvious a fraud. It is enough to say that it is their act which renders the want of prothat it is their act which removes the varieties of tection so fatal to us. Goodyear's incompetence, or Goodyear's want of means, Goodyear's timidity, or Goodyear's bad faith, might have withdrawa from us protection; but if it had been no more than want of protection, Mr. Day might have taken care of himself; but these three her ul corporations, old in the business, a large capital ted, numerous interests, great skill in the notes, and capacity to come into competition, and, above all, (an element on which I have said not one word but which is established by every one of the witnesses,) working with such fraudulent rapidity that they filled the market not only with a namerously accumulated supply, but with a supply inferior in quality that it made their suspenders and themselves ridiculous everywhere. They as effectually dove him from his business as if they had burned down his factories and driven him from the State. Now, these licenses are the plantiffs in this case, and this extraordinary spectacle is presented, that the Court is called to-day to force an estoppel against Mr. Day on the application of these very parties by whose conduct he is expelled from the business secured to him, and co adopt snother. How do I prove that ! doubtful parole testimony. I prove it by the hand at d seal of the parties themsalves, as will be seen or to ming to the second volume of piniariff's printto n her the purpose of showing that it is not with Charles Goodyear, but these very licenses, with whom Mr. Pay is conducting this brigation. The COURT (endeavoring to find the refer er on the page indicated something about India

Rubber chivalry.
Mr. Choate-I think that cannot be the page from the subject matter. I read from this docunent to the end that these gentlemen may be regularly introduced to the Court.

Mr JUDSEN-What deposition do you read from?

Mr. CHOATE-I do not rend from any such low thing as a deposition. I read from a contract. This, then, is exhibit C, and is an indentice made in 1848, after they and sens him to "fresh fields and pastures new" for other business if he could get it. Now, let us see who they are, and what they are about. I ask your attention to the next page, 109, and then, again, if your honors will look at the second volume of defendant's pointing, pages 177 and 281. They are to pay a tariff, and infects per cent of it is to be retained and applied to make a stock of for the prosecution of tuese suits, and on this fund and this stock these suits are carried on. I take it, these parties will gain very little by such motions as this, to enforce an estopped like this against a breach they have themselves made of every covenant they had entered into with the defendant. I am aware there has been an attempt to show tifat Mr. Day gave has been an attempt to show that all by gover his conservation what seems to us a pulpable and unexplained fraud, and it has been said that Mr. Bishop proves it, and that Mr. Bishop is a little correborated by Mr. Reeves and by Mr. Onderdons, one of the licensees themselves. The affirmation of these witnesses amounts to nothing; it rests at last upon Bishop, and his testimony is utterly worthers, I submit to the Court in reservence to the actunl met. Now, it your bonors will look at def ndant's te-timony, 4th vol., page 411, it will be found that even on his own story of the matter-and in that respect he is entirely contraducted by my Van Winkle-but upon his story, the nract at that time and place, between the parties, was exactly this: Their licenses were to be surrendered on the 3d of December; that Day desired in the first in-tance that they should stop totally and at once, but they supulated for an op-portunity to manufacture some time afterward, manifestly, upon a collation of the testimony of Mr. Bishop, that they might have a chance, without severe loss to themselves, to work up their stock on hand, and tous break the force of a sud-den change in the business in which they had been so long engaged. But if your honors take it as an additional agreement, given by Mr. Day, that as an accuration agreement great they should go on to manufacture until the 1st of January, I ask your honors, as chancellors—and I con't know but I may ask you to forget your characters as chancellors, and ask your honors, as just men—if there is any pretence that Mr. Day or that they intended taking it, that they were to go on and manufacture only upon the manner and upon the system according to which they had been conducting their business before; and whether it does not suppose that Mr. Day has become utterly incapable of conducting his affairs, and a fair canolisate for guardianship in an asylum, rather than for the succasms of the learned counsel on the other side, if he could have dreamed, or if he could have given anybody an opportunity to imagine or suppose he had dramed of giving them an authority to desert their old modes of employment, to double the number of the hours of their labor, to double the number of their porchases of the raw material, rapidly flooding the market during the residue then term, and so to conduct their business as to turn it into an instrumentality of competition, or to make it operate a year in advance, or until it had totally destroyed all the goods he had covenents for. I am straid I am tapsing too far into the habits of counsel in addressing a Jury, in continuing this line of remark; but I must say that which they had been accustomed to do Mr. Day was willing enough that they should con-tinue to do. That force they had been accus-tomed to employ—that rate of purchases they had been accustomed to make—that manner of leeping up the manufactures and sales of the suspenders, with which he had been familiar for roughly and for years, he was willing that they months and for years, he was wiling that they should continue, and did not suddenly, instantly and prejudicially oblige them to change it. I had prepared some observations tending to show that Bishop is not entirely reliable. I believe it may he remembered by your honor, before whom the last suit was tried, that the Jury had the gratification of hearing him testify, and that they found the issue against him.
The Judge-Will some one furnish me with the

notes of my charge on the former trial.

Mr. Van Winkle here handed a printed copy to

Mr. CHOATE-I should have asked leave, if I had thought it perfectly appropriate, and entirely delta ate, to have been permitted to read from the Judge's charge. These licenses, sir, are the plaintille in this case. I have thus far, may it please tills in this case. I have this far, may it please the Court, really done no more than to call the attention of your honors to the fact that here was a f sure to afford Day protection for two years and three mouths, and that certain consequences flowed from that failure to protect, rendering it in equitable, in the contemplation of the Court of Chancery, to undertake, after that time, to volunties and review a consequence, which is the contemplation of the Court of Chancery, to undertake, after that time, to volunties the contemplation of the court of the co ther protection, and revive a covenant which had, by its very terms, so long lain dead. I have thus by its very crime for been assuming that the plaintiff had valid and good proof that after the 1st of Jacuary, 1849, he did wake up, aithough a little late, to the duty of but I have now the honor to bring to your notice, so far from this being true, the great fact which stands out on the equities of this case, fact which stands out on the equities of this case, if at after they had, in this way, driven Mr. Day from his business, as much as though they had busined his buildings over his head, and expelled him from New Jersey, Mr. Day devoted him elf to a new description of the manufacture of shirred India Rubter goods—to an article known as Cengress boots and shees' gores; that is to

say, a fabric of shirred goods, which is es-tablished for the purpose of making a new de-scription of boot or shoe. Driven from suspenders, they could not orive Mr Day into a desertion of the settlement. He still adhered to his duty, to his right of shirring. Although they had com-pelled him to shandon the old form of it, still he did not love at once to repudiate the contract, recognized its validity as an honest, honorable man, and said to hose if, if I cannot make shirred goods in the form contemplated by the parties, I will come as near to it as I can in the form of other shirred goods in another application And this man who is said to be influenced by meatal reservations, with an intention to cheat-this man whom the licenses have denounced in such terms as the Bench may employ toward those very licenses, as having cummingly and fraudulently voided censes, as having cunningly and fraudulently voluces their own contracts—this man, who in they charge with mental re-ervation and intentions to cheat, I say, when driven from that form of corrugated manufacture just took another. I hope the licenses let him alone, and that Goodvear protected him in that other. But let us sev. No: he encountered in that new field a competition more cunning more shallow more obschievous, than he had met on the fill dof the su-pend-rs, and on that new field of competition instead of having merely new field of competition in-tend of having merely the licenics to combat with he had Goodyear himself by his agent and associate, Mr. Judson-his agent, c-adjutor, and associate for many years—Mr. Judon directly adding and abetting in the competition which he was now beginning to enter. Now, may it please the Court the proof is exactly this: that a certain Mr. Richard proof is exactly this; olis, from some time in 1848, or, possibly, early in the year 1849-the time is a ii t e indist netjust about the tune Mr. Day disappears as a suspender maker, and emerges as a maker of Congress cots-just about that time, this Mr. Richd. Solis nokes his appearance in the market as the mana-facturer and vender of a form of shirred or corru-gated goods, which they called deheately "biassed goods," and he proceeds to the manufacture of an article channingly made, and a little different from Goodyses's converted goods, b. this mercet and Goodycar's corrugated goods, b t the merest and shallowest infringement on Goodyear's patent ever attempted, which he was called on to prosecute as an infringement. He entered into this new form of sharred or cornigated goods—the same thing that Mr. Day had betaken himself to—in article of shirred or corrugated cloth, made elastic by a union with India rubber cords united by a process not different from either of them—an article known in every market in the world as sharred or corrugated goods, to sessing every property as Day's, only not quite so good, classic as his was clastic, although not quite so clastic, and made so by the same means. I say the testimony proves, that from the year 1848, this Mr. Richard Solisemerges into competition with Mr. Day, which he continued with an appreciably injurious influence upon Mr. Day's business, and from that time till he abandoned corougation in every form, and betook himself to tre business, in which I hope he is to have at lest the protection of this Court. Now, we have a dezen witnesses, by whom these facts on the part of Sols a reg been established beyong a doubt. Pacy are: Donoughan, Dodd, Ward Mcturdy (Robert and David.) Fownsend, Bogarous, Cariton, Kent, Calh oun and Bliss, and there is not a parti le of contradictory eviof Mr. Sole's business. There is a controversy as to wiether and to what extent Mr. Sole was an inventor; but the general fact, that just about co neident with the time that my client was ex-pelled from the manufacture of suspenders—still and ling to desert the c ver of the licease he had subsisted under—just then, may it please your honors, by one of those coincidences that I should not, as a reasoner on facts, undertake to explain, when was a nounced the comminations, intent hestalty, and avowing a purpose to pursus Mr. Day, let him engage where or in what form of Iudia rubber manufacture he might - just then Mr. dia rabber manufacture he hight-just their Soles is found largely engaged in the manufacture of this new f-rm of shired goods, so that after the 1st of January, 1849, he got de facto no more protection than before. While his covenant is, tection than before. While his coverant is, that he is not to work outside of his license while he is protected, there has not been a day while he is protected, there has not been a day or a night, a week day or Sabbath, a raisy ony or a dry day, from the time he made it that he has not encountered the snarpest and directest competition; that he has not felt every time he has down at night and cose up in the morning that he had squamered all that he paid upon the forms of a settlement that was worthers. I say here is direct comivance in Solis's manufacture, and I only ask the Chancellor to put that is ore a Jury in the proper course of this tribunal, to say whether or not that is not connicance with Soles's intringement. Now, in the first place if your honors please, we show that in the manufacture of the e goods it became nec ssary, in order to man electure these corrogated goods, for this Mr. Richard Soles to be with the vulcanized triple compound rubber threads which as man on casth was permitted to which novody could sell but by the consumeconsent of Goodyear, and Sotis could not have prosecuted that competition for three-quarters o an hour-but by the aid of some of that vulcan an hour—but by the and of some of the latest ized triple compound rubber, which no man can sell but Goodyear. Sols applies to the Newark Company, or all the world, for his supplies; they sold to him a little worle, and became afraid lest sold to him a little wone, and became afraid lest they should encounter Good, ear, on whose pathey should be encounted by a direct infringement, and then they declined to sell to him any more. The proofs on your brief will show you that he thereupon proceeded to make an application through a certain Mr. Ward, a professional prother, to Mr. Judson himself, equally interested to he extent of one eighth or every dollar of every taritl; for he himselt is the general agent of Goodyear fights his fights, is his adviser, sits by this table to-day, with more than the feelings of a counseller, with his heart palpitating with all the tremor of an interested party. Mr. Judson, on behalf of Mr. Sons, applies to Mr. Goodyear himself for permission to sell india Rubber threads to Solis, to oreak down liny, and he sold them, or authorized him to sell them, and it was cirectly enacted through his agent, Mr. Judson, by their license, through his agent, Mr. Judson, by their license, with a full and perfect knowledge of what Mr. Solis was doing with those threads, with a full and perfect knowledge that it was to injure and compete with Day. All of this Mr. Judson and Mr. Goodyear and do. For gain and hire they aided, abetted and comforted Solis in the enterprise of competation, and they supplies him, for money, with materials by which he competed with that was in his last exertion to raise a revenue for his men, in his last exertion to raise a revenue for his fanniy, and yet keep the letter of the contract. The evidence proves every word. I will risk my hie on that evidence. Here is not merely a want of protection, but a direct, active, most intense and influential competition, in the face of the covenant, that tood ear, by no argument, by no per mission, will lend his aid to no competition, will lend no comvaince, and contribute no aid or comfert to anybody who undertakes to displace that man's monopoly in the manufacture of corrugated 1 cods. Well, now, that being so, can'they talk of an estoppel to be have mercy on us, if in a court of equity, or any where clse this side of the great Desert of Alpers, they can get it. Can they talk of an estoppel of a man's proceedings when he is bound by a coven int which everybedy else dissolves and breaks and renders worse than worthless men, in his last exertion to raise a revenue for his rolves and breaks and renders worse than worthless on his hand- ! By the very terms of this estoppel, at the time of the settlement, it lay that they should do all they might, directly, indirectly, and in every way, to give him the monopoly, with which my learned friend taunts him, as an antimonopolist-for a monopoly he desired it-for a monopoly he had bought and paid for it. If they may take the consideration which we stipulated to pay them, and then say for the performance or his part, in the form of an estoppel, of covenant which they have broken, the Court must adjudg it to be no more consistent with technical law than it is with the general sentenents of honest men. Now, there is no need of any refinement of argument to show that this is a breach of the ovenant on the part of Goodsear. A more outrageous cheat, as I view it, than this rageous cheat, as I view it, than this by Soits on Goodyear's patent, was never given to the winds by a jury under the direction of a coart of law. But suppose it to be a little doubtful whether or not Soits has got a parent to cheat Goodyear's suppose it to be not Richard Soits's plan to play a happy sleight of hand, by taking advantage of a claim to a patent a little involved in the courts of law by which Richard Soits is enabled to get an invalid patent, and enter into campetition with Day valid patent, and enter into competition with Day - shall Goodyear help hon, when, by the terms o - shall Goodyear help hon, when, by the terms of his contract, Goodyear covenants that he will do everything to give us the market for shi red or corrugated goods? and when he means to say—and I submit that he do s mean to say—that, so far as le him lies, sgainst all new inventions, against all importers, a ainst everyb dy, everywhere, so far as he (G-odyear), a sinst everyb dy, everywhere, so far as he (G-odyear), a concerned, Day shall have the entire market for shirts concerned, Day shall have the entire market for shirts oncerned, Day shall have the entire market for shirts oncerned, possible properties and the shall be able to the same and the corrugated goods, whatsoever is known by by the name of shirred goods, whatsoever is known by the plother or general dealer as shirred goods, whatsoever fills the same place, whatsoever moets the same docever fills the same place, whatsoever moets the same docever fills the same place, whatsoever moets the same manned.